

RODNEY GAINES, ) Case No. CV 14-1509-TJH (JPR)  
 )  
 Plaintiff, )  
 )  
 vs. ) ORDER DISMISSING PLAINTIFF'S  
 ) FIRST AMENDED COMPLAINT WITH  
 ) LEAVE TO AMEND  
 COUNTY OF LOS ANGELES et )  
 al. )  
 )  
 Defendants. )  
 )

1

1 In May 2006, Plaintiff was charged in an amended information  
2 in state superior court with one count of sale, transportation,  
3 or offer to sell cocaine base under California Health & Safety  
4 Code section 11352(a) and one count of possession of a smoking  
5 device under section 11364(a). Gaines v. Stolc, No.  
6 2:11-cv-02181-TJH-JPR, at 3 (C.D. Cal. Nov. 14, 2011) (report and  
7 recommendation). Although Plaintiff had never been charged with  
8 possession of cocaine base under Health & Safety Code section  
9 11350, the trial court nonetheless sua sponte instructed the jury  
10 on that charge and provided the jury with a verdict form for it.  
11 Id. On May 15, 2006, the jury acquitted Plaintiff of the sales  
12 charge but convicted him of possessing a smoking device and the  
13 uncharged possession-of-cocaine-base offense. (Id.) In June  
14 2006, Plaintiff was sentenced to 11 years' imprisonment. (Id.)

15 Plaintiff appealed to the California Court of Appeal,  
16 raising a due process claim based on the trial court's  
17 instructing the jury on the simple-possession charge and allowing  
18 it to convict him of that crime. Id. The court of appeal agreed  
19 that the trial court erred but found that Plaintiff had forfeited  
20 his claim by failing to object to the instruction or the verdict  
21 form at trial. Id. Plaintiff later raised the due process claim  
22 in a Petition for Review and habeas petition to the California  
23 Supreme Court, which denied it both times. Id. at 3-4.

24 Plaintiff then filed a federal habeas petition in this  
25 Court. The Court found that Plaintiff's right to due process was  
26 violated when he was convicted of a crime with which he was never  
27 charged and that Respondent had waived any procedural-bar  
28 defense. Id. at 11; see also Gaines, No. 2:11-cv-02181-TJH-JPR,

1 at 4 (C.D. Cal. Feb. 16, 2012) (order and judgment). It  
2 therefore entered judgment conditionally granting the petition  
3 and ordering that Plaintiff be discharged from "all consequences  
4 of his conviction pursuant to California Health & Safety Code  
5 § 11350 in Los Angeles Superior Case No. MA032254" unless he was  
6 brought to retrial within a certain period of time. Gaines, No.  
7 2:11-cv-02181-TJH-JPR, at 6-7 (C.D. Cal. Feb. 16, 2012) (order  
8 and judgment). The Court did not disturb Plaintiff's conviction  
9 for possession of a smoking device under section 11364(a).<sup>1</sup> The  
10 state apparently declined to retry Plaintiff. (FAC ¶ 10.)

11 In the instant civil-rights action, Plaintiff alleges that  
12 Defendants violated his rights under the U.S. Constitution and  
13 state law in various ways by arresting him on June 11, 2005, and  
14 subsequently prosecuting him. Specifically, Plaintiff alleges  
15 that Defendants L.A. County, McMaster, Lehrman, Izzo, and Does  
16 violated the Fourth and 14th amendments by falsely arresting and  
17 imprisoning him (FAC ¶¶ 16-26), using excessive force against him  
18 (FAC ¶¶ 27-30), maliciously prosecuting him (FAC ¶¶ 31-35), and  
19 conspiring to violate his constitutional rights (FAC ¶¶ 36-38);  
20 Defendants L.A. County, Payne, and Does violated the Fourth and  
21 14th amendments by maliciously prosecuting him (FAC ¶¶ 39-41);  
22 Defendants County, McMaster, Lehrman, Izzo, Payne, and Does  
23 violated state law by falsely imprisoning him (FAC ¶¶ 42-43);  
24 Defendants County, McMaster, Lehrman, and Does violated state law  
25 by committing assault and battery on him (FAC ¶¶ 44-47);

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26  
27 <sup>1</sup>Plaintiff incorrectly argues that the Court "ordered  
28 Plaintiff to be released if the State did not retry him." (FAC  
¶ 10.)

1 Defendants County, Payne, and Does violated state law by failing  
2 to arraign him on the possession charge (FAC ¶¶ 48-52); and  
3 Defendants County, McMaster, Lehrman, Izzo, Payne, and Does  
4 violated state law by negligently inflicting emotional distress  
5 on him (FAC ¶ 53).

6 After screening the FAC in accordance with 28 U.S.C.  
7 §§ 1915(e)(2) and 1915A prior to ordering service, the Court  
8 finds that much of it fails to state a claim upon which relief  
9 might be granted.

10 Because it appears to the Court that at least some of the  
11 deficiencies of the FAC are capable of being cured by amendment,  
12 it is dismissed with leave to amend. See Lopez v. Smith, 203  
13 F.3d 1122, 1130-31 (9th Cir. 2000) (en banc) (holding that pro se  
14 litigant must be given leave to amend complaint unless absolutely  
15 clear deficiencies cannot be cured by amendment). If Plaintiff  
16 desires to pursue this action, he is ORDERED to file a Second  
17 Amended Complaint ("SAC") within 28 days of the service date of  
18 this Order, remedying the deficiencies discussed below.<sup>2</sup>

#### 19 STANDARD OF REVIEW

20 The Court's screening of a complaint under 28 U.S.C.  
21 §§ 1915(e)(2) and 1915A is governed by the following standards.  
22 A complaint may be dismissed as a matter of law for failure to  
23 state a claim "where there is no cognizable legal theory or an  
24 absence of sufficient facts alleged to support a cognizable legal  
25 theory." Shroyer v. New Cingular Wireless Servs., Inc., 622 F.3d  
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27 <sup>2</sup>It appears that at least some of Plaintiff's claims may be  
28 barred by the applicable statute of limitations, but that is an  
affirmative defense to be raised by Defendants.

1 1035, 1041 (9th Cir. 2010) (internal quotation marks omitted);  
2 accord O'Neal v. Price, 531 F.3d 1146, 1151 (9th Cir. 2008). In  
3 considering whether a complaint states a claim, a court must  
4 accept as true all the factual allegations in it. Ashcroft v.  
5 Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d  
6 868 (2009); Hamilton v. Brown, 630 F.3d 889, 892-93 (9th Cir.  
7 2011). The court need not accept as true, however, "allegations  
8 that are merely conclusory, unwarranted deductions of fact, or  
9 unreasonable inferences." In re Gilead Scis. Sec. Litig., 536  
10 F.3d 1049, 1055 (9th Cir. 2008) (internal quotation marks  
11 omitted); see also Shelton v. Chorley, 487 F. App'x 388, 389 (9th  
12 Cir. 2012) (finding that district court properly dismissed claim  
13 when plaintiff's "conclusory allegations" did not support it).  
14 Although a complaint need not include detailed factual  
15 allegations, it "must contain sufficient factual matter, accepted  
16 as true, to 'state a claim to relief that is plausible on its  
17 face.'" Iqbal, 556 U.S. at 678 (quoting Bell Atl. Corp. v.  
18 Twombly, 550 U.S. 544, 570, 127 S. Ct. 1955, 1974, 167 L. Ed. 2d  
19 929 (2007)). A claim is facially plausible when it "allows the  
20 court to draw the reasonable inference that the defendant is  
21 liable for the misconduct alleged." Iqbal, 556 U.S. at 678. "A  
22 document filed pro se is to be liberally construed, and a pro se  
23 complaint, however inartfully pleaded, must be held to less  
24 stringent standards than formal pleadings drafted by lawyers."  
25 Erickson v. Pardus, 551 U.S. 89, 94, 127 S. Ct. 2197, 2200, 167  
26 L. Ed. 2d 1081 (2007) (citations and internal quotation marks  
27 omitted).

## DISCUSSION

I. Plaintiff's § 1983 Claims for Unlawful Arrest and Imprisonment, Malicious Prosecution, and Conspiracy Must Be Dismissed

Plaintiff alleges that Defendants Los Angeles County, McMaster, Lehrman, Izzo, and Does violated his rights under the Fourth and 14th amendments by falsely arresting and imprisoning him, maliciously prosecuting him, and conspiring to violate his civil rights. (FAC ¶¶ 16-26, 31-43.) In support, Plaintiff contends that he did "absolutely nothing" to give Defendants "reason to believe a crime was committed" and that they therefore "had no reason to detain or search Plaintiff" or to "report that Plaintiff had committed a crime." (FAC ¶ 18.) Plaintiff also notes that he was acquitted of the charge of selling cocaine base and his conviction of simple possession was overturned on federal habeas review. (FAC ¶¶ 9-10). Plaintiff's claims must be dismissed because they are barred by Heck v. Humphrey, 512 U.S. 477, 114 S. Ct. 2364, 129 L. Ed. 2d 383 (1994), and for other reasons.

In Heck v. Humphrey, the U.S. Supreme Court held that if a judgment in favor of a plaintiff in a civil rights action would necessarily imply the invalidity of his or her conviction or sentence, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has been invalidated. 512 U.S. at 486-87; see also Smith v. City of Hemet, 394 F.3d 689, 695 (9th Cir. 2005) (en banc) ("Heck says that if a criminal conviction arising out of the same facts stands and is fundamentally inconsistent with the unlawful

1 behavior for which section 1983 damages are sought, the 1983  
2 action must be dismissed." (internal quotation marks omitted)).  
3 Thus, the "relevant question" in a § 1983 suit is whether success  
4 would "'necessarily imply' or 'demonstrate' the invalidity of the  
5 earlier conviction or sentence." Id. (quoting Heck, 512 U.S. at  
6 487).

7 To prevail on claims for false arrest and imprisonment,  
8 Plaintiff would have to demonstrate that Defendants had no  
9 probable cause to arrest him. See Cabrera v. City of Huntington  
10 Park, 159 F.3d 374, 380 (9th Cir. 1998). Similarly, to prevail  
11 on his malicious-prosecution claim, Plaintiff would have to  
12 demonstrate that Defendants prosecuted him with malice and  
13 without probable cause. See Awabdy v. City of Adelanto, 368 F.3d  
14 1062, 1066 (9th Cir. 2004) ("In order to prevail on a § 1983  
15 claim of malicious prosecution, a plaintiff must show that the  
16 defendants prosecuted him with malice and without probable cause,  
17 and that they did so for the purpose of denying him equal  
18 protection or another specific constitutional right." (internal  
19 quotation marks and alterations omitted)). But such findings  
20 would imply that Plaintiff's conviction for possession of a  
21 smoking device, which apparently arose out of the same events as  
22 the other criminal allegations, is invalid. (See FAC ¶ 33  
23 (alleging that Defendants McMaster, Lehrman, and Izzo falsely  
24 stated that Plaintiff had "handed [Izzo] a pipe and cocaine  
25 base"); see also Guerrero v. Gates, 442 F.3d 697, 703 (9th Cir.  
26 2006) ("Wrongful arrest, malicious prosecution, and a conspiracy  
27 among Los Angeles officials to bring false charges against  
28 [plaintiff] could not have occurred unless he were innocent of

1 the crimes for which he was convicted."); Awabdy, 368 F.3d at  
 2 1068 ("An individual seeking to bring a malicious prosecution  
 3 claim must generally establish that the prior proceedings  
 4 terminated in such a manner as to indicate his innocence."); see  
 5 also Devenpeck v. Alford, 543 U.S. 146, 153-54, 125 S. Ct. 588,  
 6 594, 160 L. Ed. 2d 537 (2004) (when probable cause to arrest for  
 7 any crime exists, arrest does not violate the Fourth Amendment  
 8 whether or not that crime was actually charged); Page v. Stanley,  
 9 No. CV 11-2255 CAS (SS), 2012 WL 1535691, at \*8 (C.D. Cal. Mar.  
 10 23, 2012) ("[W]hen a conviction on one charge is accompanied by a  
 11 contemporaneous acquittal on another charge in the same  
 12 proceeding, a malicious prosecution claim based on the acquittal  
 13 may proceed if the charges aim to punish different conduct."  
 14 (quotation marks and alteration omitted and emphasis added)),  
 15 accepted by 2012 WL 1535687 (C.D. Cal. May 1, 2012).<sup>3</sup> Here,

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17 <sup>3</sup>In Jackson v. Barnes, the plaintiff was convicted at his  
 18 first trial on evidence obtained in violation of his Miranda  
 19 rights, and after the conviction was reversed on federal habeas  
 20 corpus review, he was again convicted, this time without the use of  
 21 the illegally obtained evidence. \_\_ F.3d \_\_, 2014 WL 1324448, at  
 22 \*1 (9th Cir. Apr. 15, 2014). The plaintiff then sued for the  
 23 violation of his Miranda rights at his first trial. Id. The Ninth  
 24 Circuit held that the plaintiff's claim was not Heck barred because  
 25 his conviction in the second trial was "insulated from the  
 26 inculpatory statements that [were] the subject of [his] § 1983  
 27 suit"; as such, a judgment in his favor would have no bearing on  
 28 his conviction. Id. at \*3. Here, however, Plaintiff bases his  
 § 1983 suit on the alleged unlawfulness of his arrest,  
 imprisonment, and prosecution, not the due process violation that  
 resulted in the reversal of his possession charge on federal habeas  
 corpus review. And as discussed above, a favorable finding on  
 those claims would call into question his conviction for possession  
 of a smoking device, which resulted from the very same arrest and  
 prosecution as the overturned possession charge. As such, Jackson  
 does not apply here.



1 Plaintiff acknowledges that the two charges against him arose  
2 from the same conduct, "hand[ing Izzo] a pipe and cocaine base."  
3 (FAC ¶ 33.)

4 To the extent Plaintiff claims that Defendants conspired to  
5 commit the unlawful acts, moreover, that claim is also barred by  
6 Heck. See Cooper v. Ramos, 704 F.3d 772, 784-85 (9th Cir. 2012)  
7 (finding plaintiff's claim alleging "broad conspiracy to obtain  
8 [his] conviction and keep him incarcerated" was "an effort to  
9 attack the integrity of the investigation and trial" and  
10 therefore barred by Heck). And Plaintiff's conspiracy claim also  
11 fails because he has not alleged sufficient facts to support a  
12 finding that any Defendants agreed to violate his civil rights.  
13 See Crowe v. Cnty. of San Diego, 608 F.3d 406, 440 (9th Cir.  
14 2010) ("To establish liability for a conspiracy in a § 1983 case,  
15 a plaintiff must demonstrate the existence of an agreement or  
16 meeting of the minds to violate constitutional rights." (internal  
17 quotation marks omitted)); Olsen v. Idaho St. Bd. of Med., 363  
18 F.3d 916, 929 (9th Cir. 2004) ("To state a claim for conspiracy  
19 to violate constitutional rights, the plaintiff must state  
20 specific facts to support the existence of the claimed  
21 conspiracy." (internal quotation marks omitted)). Moreover, to  
22 the extent Plaintiff alleges that Defendants conspired against  
23 him in violation of § 1985 (see FAC at 8), his claim fails for  
24 the additional reason that he has not alleged any facts showing  
25 that Defendants were motivated by racial or class-based  
26 discriminatory animus. See Bray v. Alexandria Women's Health  
27 Clinic, 506 U.S. 263, 267-68, 113 S. Ct. 753, 758, 122 L. Ed. 2d  
28 34 (1993) (to state claim under § 1985(3), plaintiff must allege

1 “(1) that some racial, or perhaps otherwise class-based,  
 2 invidiously discriminatory animus lay behind the conspirators’  
 3 action, and (2) that the conspiracy aimed at interfering with  
 4 rights that are protected against private, as well as official,  
 5 encroachment” (citations and internal quotation marks omitted)).

6 Accordingly, Plaintiff’s §§ 1983 and 1985 claims for  
 7 wrongful arrest and imprisonment, malicious prosecution, and  
 8 conspiracy to violate his constitutional rights are dismissed.  
 9 See Trimble v. City of Santa Rosa, 49 F.3d 583, 585 (9th Cir.  
 10 1995) (dismissal under Heck is “required to be without prejudice  
 11 so that [plaintiff] may reassert his claims if he ever succeeds  
 12 in invalidating his conviction”).

## 13 **II. Defendant Payne is Entitled to Absolute Immunity**

14 Plaintiff asserts that Deputy District Attorney Payne  
 15 maliciously prosecuted him in violation of the Fourth and 14th  
 16 amendments. (FAC ¶¶ 39-41.) In support, Plaintiff contends that  
 17 Payne furthered a “scheme to illegally commit Plaintiff” for the  
 18 uncharged crime of possession in various ways. (See FAC ¶¶ 11-  
 19 14.) Plaintiff’s claims against Payne must be dismissed because  
 20 he is entitled to prosecutorial immunity.

21 Section 1983 claims for monetary damages against prosecutors  
 22 are barred by absolute prosecutorial immunity, provided the  
 23 claimed violations are based on their activities as legal  
 24 advocates in criminal proceedings.<sup>4</sup> Van de Kamp v. Goldstein,  
 25 555 U.S. 335, 342-43, 129 S. Ct. 855, 861, 172 L. Ed. 2d 706  
 26 (2009); Imbler v. Pachtman, 424 U.S. 409, 430-31, 96 S. Ct. 984,  
 27

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28 <sup>4</sup>Plaintiff does not request any relief other than money  
 damages. (FAC at 11-12.)

1 994-95, 47 L. Ed. 2d 128 (1976). Plaintiff asserts that Payne  
 2 violated his rights in several ways during the course of his  
 3 criminal trial - including by failing to arraign Plaintiff on the  
 4 possession charge or later move to dismiss it, submitting to the  
 5 court a probation report containing allegedly false information,  
 6 and making a sentencing recommendation (FAC ¶¶ 11-14, 40) - but  
 7 all of that conduct is squarely protected by prosecutorial  
 8 immunity.<sup>5</sup> See, e.g., Imbler, 424 U.S. at 430 (prosecutorial  
 9 immunity applies with "full force" to activities "intimately  
 10 associated with the judicial phase of the criminal process");  
 11 Broam v. Bogan, 320 F.3d 1023, 1029 (9th Cir. 2003) ("If the  
 12 action was part of the judicial process, the prosecutor is  
 13 entitled to the protection of absolute immunity whether or not he  
 14 or she violated the civil plaintiff's constitutional rights.");  
 15 Genzler v. Longanbach, 410 F.3d 630, 637 (9th Cir. 2005) (noting  
 16 that prosecutor "enjoys absolute immunity from a suit alleging  
 17 that he maliciously initiated a prosecution, used perjured  
 18 testimony at trial, or suppressed material evidence at trial,"  
 19 among other things).

20 Because Payne is entitled to immunity, the § 1983 claim  
 21 against him must be dismissed.

### 22 **III. Plaintiff Has Failed to State a Claim Against L.A. County**

23 Plaintiff's claims against L.A. County must also be  
 24 dismissed because he has failed to allege that his injuries  
 25 resulted from any county policy or practice.

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27 <sup>5</sup>Plaintiff acknowledges that Payne objected to the possession  
 28 charge but the trial court nevertheless "ordered the jury to  
 consider [it]." (FAC ¶ 11.)

1 Municipalities and other local government units are  
2 considered "persons" under § 1983 and therefore may be liable for  
3 causing a constitutional deprivation. Monell v. Dep't of Soc.  
4 Servs., 436 U.S. 658, 690-91, 98 S. Ct. 2018, 2036, 56 L. Ed. 2d  
5 611 (1978); Long v. Cnty. of L.A., 442 F.3d 1178, 1185 (9th Cir.  
6 2006). Because no respondeat superior liability exists under  
7 § 1983, a municipality is liable only for injuries that arise  
8 from an official policy or longstanding custom. Monell, 436 U.S.  
9 at 694; City of Canton v. Harris, 489 U.S. 378, 385, 109 S. Ct.  
10 1197, 1203, 103 L. Ed. 2d 412 (1989). A plaintiff must show  
11 "that a [county] employee committed the alleged constitutional  
12 violation pursuant to a formal governmental policy or a  
13 longstanding practice or custom which constitutes the standard  
14 operating procedure of the local governmental entity." Gillette  
15 v. Delmore, 979 F.2d 1342, 1346 (9th Cir. 1992) (internal  
16 quotation marks omitted). In addition, he must show that the  
17 policy was "(1) the cause in fact and (2) the proximate cause of  
18 the constitutional deprivation." Trevino v. Gates, 99 F.3d 911,  
19 918 (9th Cir. 1996). "Liability for improper custom may not be  
20 predicated on isolated or sporadic incidents; it must be founded  
21 upon practices of sufficient duration, frequency and consistency  
22 that the conduct has become a traditional method of carrying out  
23 policy." Id. at 918; Thompson v. Los Angeles, 885 F.2d 1439,  
24 1443-44 (9th Cir. 1989) ("Consistent with the commonly understood  
25 meaning of custom, proof of random acts or isolated events are  
26 [sic] insufficient to establish custom."), overruled on other  
27 grounds by Bull v. City & Cnty. of S.F., 595 F.3d 964, 981 (9th  
28 Cir. 2010) (en banc).

1 A plaintiff may also establish municipal liability by  
2 demonstrating that the alleged constitutional violation was  
3 caused by a failure to train municipal employees adequately. See  
4 Harris, 489 U.S. at 388. A plaintiff alleging a failure-to-train  
5 claim must show the following: (1) he was deprived of a  
6 constitutional right; (2) the municipality had a training policy  
7 that "amounts to deliberate indifference to the constitutional  
8 rights of the persons with whom [its police officers] are likely  
9 to come into contact"; and (3) his constitutional injury would  
10 not have happened had the municipality properly trained those  
11 officers. Blankenhorn v. City of Orange, 485 F.3d 463, 484 (9th  
12 Cir. 2007) (internal quotation marks omitted, alteration in  
13 original).

14 Here, Plaintiff has failed allege any facts regarding the  
15 existence of a formal County regulation or policy that caused his  
16 alleged injuries, see Gillette, 979 F.2d at 1346; Trevino, 99  
17 F.3d at 918, nor has he alleged that the County maintained a  
18 "longstanding practice or custom which constitutes the standard  
19 operating procedure of the local government entity," Gillette,  
20 979 F.2d at 1346-47 (internal quotation marks omitted); see also  
21 Monell, 436 U.S. at 691 (noting that custom must be so  
22 "persistent and widespread" that it constitutes a "permanent and  
23 well settled" policy). Plaintiff has alleged only a single  
24 incident each of excessive force, unlawful arrest and  
25 imprisonment, and malicious prosecution, which even if assumed to  
26 be unconstitutional are insufficient to establish Monell  
27 liability. See Meehan v. L.A. Cnty., 856 F.2d 102, 107 (9th Cir.  
28 1988) (two incidents not sufficient to establish custom).

1 Plaintiff's claims against the County therefore must be  
2 dismissed.<sup>6</sup>

3 **IV. Compliance with Federal Rule of Civil Procedure 10(a)**

4 Federal Rule of Civil Procedure 10(a) requires that "the  
5 title of the complaint must name all the parties." The title of  
6 Plaintiff's Complaint is simply Rodney Gaines v. County of Los  
7 Angeles, et al. In any amended complaint, Plaintiff must list  
8 all the defendants in the caption or the complaint will be  
9 subject to dismissal on that basis alone. See Ferdik v.  
10 Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992).<sup>7</sup>

11 \*\*\*\*\*

12 If Plaintiff desires to pursue any of the claims in the FAC,  
13 he is ORDERED to file a Second Amended Complaint within 28 days  
14 of the service date of this Order, remedying the deficiencies  
15 discussed above. The SAC should bear the docket number assigned  
16 to this case, be labeled "Second Amended Complaint," and be  
17 complete in and of itself, without reference to the original  
18 Complaint or any other pleading, attachment, or document. The  
19 Clerk is directed to provide Plaintiff with another Central  
20

21 \_\_\_\_\_  
22 <sup>6</sup>The Supreme Court has held that an "official-capacity suit  
23 is, in all respects other than name, to be treated as a suit  
24 against the entity." Kentucky v. Graham, 473 U.S. 159, 166, 105 S.  
25 Ct. 3099, 3015, 87 L. Ed. 2d 114 (1985); see also Brandon v. Holt,  
26 469 U.S. 464, 471-72, 105 S. Ct. 873, 878, 83 L. Ed. 2d 878 (1985).  
Plaintiff's claims against the County, the sheriff's deputies in  
their official capacity, and Payne in his official capacity (FAC at  
2-3) are therefore needlessly repetitive. In any SAC, Plaintiff  
should omit any repetitive official-capacity claims.

27 <sup>7</sup>If Plaintiff files a SAC that sufficiently states a federal  
28 cause of action, the Court will address whether he has sufficiently  
stated any state-law claim.

1 District of California Civil Rights Complaint Form, CV-66, to  
2 facilitate Plaintiff's filing of a SAC if he elects to proceed  
3 with this action. Plaintiff is admonished that if he fails to  
4 timely file a SAC, the Court will recommend that this action be  
5 dismissed on the grounds set forth above and/or for failure to  
6 diligently prosecute.

7  
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9  
10 DATED: May 16, 2014

  
JEAN ROSENBLUTH  
U.S. MAGISTRATE JUDGE